

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

LEON MARKS,

Defendant-Appellee.

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UNPUBLISHED

March 15, 2005

No. 257916

Wayne Circuit Court

LC No. 04-001550

Before: Wilder, P.J., and Sawyer and White, JJ.

PER CURIAM.

Defendant was charged with four counts of second-degree murder, MCL 750.317, and one count of felonious driving, MCL 257.626c. The prosecution appeals as on leave granted<sup>1</sup> a pretrial order granting defendant's motion to suppress his statement to the police. We reverse and remand for further proceedings.

I

On March 3, 2003, a motor vehicle collision in Detroit occurred when a large sports utility vehicle, a GMC Yukon, ran a red light and struck a second vehicle. The collision resulted in the death of four people. Investigator Mark Zellman of the Detroit Police Fatal Squad was assigned to the case. During his investigation, Zellman learned that defendant had been in the SUV that had been involved in the collision, and that defendant had been hospitalized because he had suffered numerous injuries in the accident. Zellman was informed that defendant was

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<sup>1</sup> On July 2, 2004, this Court granted the prosecution's motion for immediate consideration of the trial court's order, but denied both the prosecution's motions for a stay of proceedings and delayed application for leave to appeal. *People v Marks*, unpublished order of the Court of Appeals, entered July 2, 2004 (Docket No. 256029). On July 8, 2004, the Michigan Supreme Court granted the prosecution's motion for immediate consideration and motion for a stay of proceedings. On September 16, 2004, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, the Supreme Court remanded the case to this Court for consideration as on leave granted. *People v Marks*, 471 Mich 876; 688 NW2d 499 (2004).

possibly a passenger in the SUV, and had no information suggesting that defendant had been driving the vehicle or had any connection to the lease of the vehicle.

On March 5, 2003, Zellman and his partner went to Sinai-Grace Hospital to interview defendant as a possible witness to the accident. When Zellman and his partner arrived at the hospital, two Detroit police officers were stationed outside defendant's hospital room. The officers had been directed to prevent unauthorized access to the room and to "secure" and "detain" defendant. However the officers did not handcuff defendant to his bed or place any formal restraints on his freedom, as they did not believe he would have been physically able to leave the room. Defendant was aware of the officers' presence outside his room, but the officers never spoke to defendant and never told defendant that he was in custody or not free to leave. When Zellman entered the defendant's room to interview the defendant, he noticed that the defendant had sustained injuries to his head, hand, and hip/pelvis. After Zellman entered the defendant's room, his partner advised the officers to leave. Zellman was not aware that the officers had left while he was interviewing the defendant, and only discovered they were gone when he left defendant's room.

Zellman did not give defendant *Miranda*<sup>2</sup> warnings when he began to interview the defendant, but he told the defendant that he was not the focus of the investigation, that he was not in custody, and that he could stop the interview at any time. Defendant stated that he had an attorney in another criminal case, but that since he was not in custody in regard to his interview with Zellman, he did not believe he needed to have an attorney present for the interview. During the interview, defendant admitted that he was driving the SUV at the time of the accident. Several weeks later, Zellman requested a warrant for defendant's arrest in this matter. The warrant was signed in September 2003, and defendant was arrested in November, 2003 and charged as indicated, *supra*.

In the circuit court, defendant moved to suppress his statement made to Zellman on the basis that he was in custody at the time of the interview and was entitled to *Miranda* warnings. Following a hearing on defendant's motion to suppress his statement, the trial court granted the motion, stating:

It becomes quite obvious to me that this defendant was in custody. I was really concerned when the officer said when he got to the room there were two officers already standing there . . . Well, he was in custody. He should have been given his rights. He was not given his rights. His freedom had been infringed upon. These two police officers were going to keep him from leaving. Not only that, they admit that they were there to detain and secure him. That's custody. [Defendant's] motion to suppress the statement for failure to give the warnings is granted.

This appeal ensued.

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<sup>2</sup> *Miranda v Arizona*, 384 US 436; 16 L Ed 2d 694; 86 S Ct 1602 (1996).

## II

The determination of whether a defendant is in custody requires an application of the controlling legal standard to the historical facts. *People v Coomer*, 245 Mich App 206, 219; 627 NW2d 612 (2001). The trial court's factual findings concerning the circumstances surrounding the statement are reviewed for clear error. *Id.*, citing *People v Mendez*, 225 Mich App 381, 382; 571 NW2d 528 (1997). “‘The ultimate question whether a person was ‘in custody’ for purposes of *Miranda* warnings is a mixed question of fact and law, which must be answered independently by the reviewing court after review de novo of the record.’” *Coomer, supra* at 219, quoting *Mendez, supra* at 382.

## III

The sole issue on appeal is whether the trial court erred in granting defendant's pretrial motion to suppress his statement to the police on the ground that he was not given *Miranda* warnings before questioning. The prosecution argues that the trial court erred in suppressing defendant's statement because defendant was not in custody during the interview, and therefore, *Miranda* warnings were not required. We agree.

*Miranda* warnings are only required when the defendant is subject to a custodial interrogation. *People v Herndon*, 246 Mich App 371, 395; 633 NW2d 376 (2001). The United States Supreme Court offered the following test in determining whether the defendant is in custody for the purposes of *Miranda*:

Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave. Once the scene is set and the players' lines and actions are reconstructed, the court must apply an objective test to resolve the ultimate inquiry: was there a *formal* arrest or restraint on freedom of movement of the degree associated with a formal arrest. [*Thompson v Keohane*, 516 US 99, 112; 116 S Ct 457; 133 L Ed 2d 383 (1995), on rem 145 F3d 1341 (CA 9, 1998) (internal citations omitted) (emphasis added).]

In *Coomer*, this Court reaffirmed the inquiry required in determining when *Miranda* warnings are required:

The term “custodial interrogation” means “ ‘questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of [her] freedom of action in any significant way.’ ” To determine whether a defendant was in custody at the time of the interrogation, we look at the totality of the circumstances, with the key question being whether the accused reasonably could have believed that she was not free to leave. The determination of custody depends on the objective circumstances of the interrogation rather than the subjective views harbored by either the interrogating officers or the person being questioned.” [*Coomer, supra* at 219-220, quoting *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999) (internal citations omitted).]

On the basis of the objective circumstances of defendant's interrogation by Zellman, the trial court clearly erred in finding that defendant's freedom had been infringed upon, and thus erred in finding that defendant was in custody during his interrogation. Neither the presence of police officers outside defendant's hospital door, nor the fact that the officers would have prevented defendant from leaving the hospital, constituted an infringement of defendant's freedom sufficient to warrant a determination that he was "in custody" and was entitled to *Miranda* warnings. First, defendant was never aware that the police officers outside his hospital door had orders to secure and detain him, and thus, these orders had no bearing on defendant's objective understanding of the circumstances of the interview. See *Zahn, supra* at 449-450 (the trial court erred in finding defendant was in custody on the basis of the evidence that the interrogating officer intended to prevent the defendant from leaving the room where he was being questioned, when the officer's intent was never conveyed to the defendant and therefore had no bearing on defendant's understanding of the situation). Second, defendant was not subjected to a formal arrest or subjected to a restraint of movement associated with a formal arrest. *People v Kulpinski* 243 Mich App 8, 25; 620 NW2d 537 (2000), citing *People v Peerenboom*, 224 Mich App 195, 197-199; 568 NW2d 153 (1997). The fact that defendant was unable to leave the hospital room because of his medical condition is not sufficient to render his interview with Zellman a "custodial interrogation." *Id.*

Moreover, the evidence established that defendant expressly agreed to be interviewed by Zellman without the presence of an attorney on the express understanding that he was not in custody. Thus, considering the totality of the circumstances in an objective fashion, the evidence does not show that defendant could have reasonably believed that he was not free to leave, and the trial court erred in suppressing defendant's statement on the basis that he was in custody at the time of his interrogation and entitled to *Miranda* warnings.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kurtis T. Wilder

/s/ David H. Sawyer